

FCC MAIL SECTION

Federal Communications Commission

DA 99-897

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DISPATCHED BY
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
(Elgin, Oregon)	)	MM Docket No. 99-155
	)	RM-9606
)	
(Pleasant Dale, Nebraska)	)	MM Docket No. 99-156
	)	RM-9613
)	
(Warrenton, Oregon)	)	MM Docket No. 99-157
	)	RM-9614
)	
(Dexter, New Mexico)	)	MM Docket No. 99-158
	)	RM-9615
)	
(Paxton, Nebraska)	)	MM Docket No. 99-159
	)	RM-9616
)	
(Overton, Nebraska)	)	MM Docket No. 99-160 ✓
	)	RM-9617

NOTICE OF PROPOSED RULE MAKING**Adopted: May 5, 1999****: Released: May 14, 1999****Comment Date:** July 6, 1999**Reply Comment Date:** July 21, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 99-155, RM-9606

Petitioner: Gary Noel
71536 Levi Lane
Elgin, Oregon 97827

Proposal: Allot Channel 290A to Elgin, Oregon, as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Elgin, Oregon	--	290A

Coordinates: 45-33-54 NL and 117-55-00 WL

Additional Information: This allotment does not require a site restriction.

FCC Contact: Leslie K. Shapiro, (202) 418-2180

B. MM Docket No. 99-156, RM-9613

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President, Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 256A to Pleasant Dale, Nebraska, as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Pleasant Dale, Nebraska	--	256A

Coordinates 40-51-25 NL and 96-55-37 WL

Additional Information: This allotment requires a site restriction of 7.3 kilometers (4.5 miles) north to avoid a short-spacing to 7.3 kilometers (4.5 miles) north to avoid a short-spacing to Station KUTT, Channel 258C1, Fairbury, Nebraska. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies " . . . among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the proponent of a channel allotment must demonstrate the place to be a geographically identifiable population grouping. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1982). Although the proponent of the allotment does not need to show that the borders of the locality are precisely delineated, it must show that residents of the locality are commonly regarded as a distinct group. This can be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Beacon Broadcasting, 2 FCC Rcd 3469 (1987), aff'd, 2 FCC Rcd 7562 (1987). Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy & Rules Div. 1990), aff'd 10 FCC Rcd 9831 (1995). We do recognize that Pleasant Dale is listed as a village in the 1990 U.S. Census, and attributed with a population of 253 people. However, we may find that a population grouping of 253 people does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social and civic organizations. See, Searles Valley, CA, 3 FCC Rcd 5221 (1988). In past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, petitioner is requested to present the Commission with specific information to demonstrate that Pleasant Dale has the social, economic and governmental indicia to qualify it as a community for allotment purposes. See, Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Petitioner should show that the organizations, civic groups, etc., have a nexus with Pleasant Dale. Failure to provide the requested information will result in a denial of the proposal.

FCC Contact: Leslie K. Shapiro, (202) 418-2180

C. MM Docket No. 99-157, RM-9614**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President, Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 259A to Warrenton, Oregon, as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Warrenton, Oregon	--	259A

Coordinates: 46-16-49 NL; 123-59-13 WL

Additional Information: This allotment requires a site restriction of 13.9 kilometers (8.6 miles) northwest to avoid a short-spacing to Station KWJJ-FM, Channel 258C1, Portland, Oregon.. Canadian concurrence in the allotment is required since Warrenton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

FCC Contact: Leslie K. Shapiro, (202) 418-2180**D. MM Docket No. 99-158, RM-9615****Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President, Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 241C3 to Dexter, New Mexico, as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Dexter, New Mexico	--	241C3

Coordinates: 33-11-42 NL; 104-22-18 WL.

Additional Information: This allotment requires no site restriction. Concurrence by the Mexican government is required since Dexter is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

FCC Contact: Leslie K. Shapiro, (202) 418-2180

F. MM Docket No. 99-159, RM-9616

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President, Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 228C1 to Paxton, Nebraska, as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Paxton, Nebraska	--	228C1

Coordinates: 41-06-48 NL; 101-21-12 WL.

Additional Information: This allotment requires no site restriction.

FCC Contact: Leslie K. Shapiro, (202) 418-2180

G. MM Docket No. 99-160, RM-9617

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President, Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 257C2 to Overton, Nebraska, as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Overton, Nebraska	--	257C2

Coordinates: 40-44-24 NL; 99-42-06 WL.

Additional Information: This allotment requires a site restriction of 13.8 kilometers (8.6 miles) west to avoid a short-spacing to Station KKPR-FM, Channel 255C1, Kearney, Nebraska..

FCC Contact: Leslie K. Shapiro, (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before July 6, 1999, and reply comments on or before July 21, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the

proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.